IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

W.P.NO.7823 OF 2001

1. Union of India,
rep. by the Chief Personnel Officer,
Southern Railway, Park Town,
Chennai 600 003.

2. Divisional Personnel Officer,
Southern Railway,
Madurai. .. Petitioners

-Vs-

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai 104.

2. G. Ganesan,
S/o. Gopal,
Athanur Colony,
Keelapa Salai Post,
Manamadurai 630 606.

3. M. Sivakumar,
S/o. Murugesan
Vinayagar St. Athanur Road,
Manamadurai.

4. Regional Director,
Regional Directorate
Apprentices Training,
Guindy, Chennai 600 032. .. Respondents

Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, as stated therein.

For Petitioners : Mr. R. Thyagarajan
Senior Counsel for

Mr.V.G. Suresh Kumar

For Respondent - 2 : Ms.R. Vaigai

Respondent-4 : Mr.P.Sivashanmuga Sundaram
Addl.Govt. Pleader

:JUDGMENT

P.K.MISRA, J.

The present writ petition has been filed by the Union of India, represented by the Chief Personnel Officer, Southern Railway, Park Town, Chennai-600 003 and the Divisional Personnel Officer, Southern Railway, Madurai, against the order of the Central Administrative Tribunal dated 10.1.2001 in O.A.No.807 of 1999, giving direction to the present petitioners to offer suitable employment to the present respondents 2 and 3.

2. The facts giving rise to the present writ petition are required to be noticed in some detail. The present Respondents 2 and 3 were selected for training as Apprentices under the Apprentices Act, 1961 and under letter dated 23 .4.199 1, they were directed to undergo Shed Floor Training in the open line establishment workshops for a period of 3 years. In the said letter, it has been stipulated that even on completion of training period, there was no guarantee for employment. The respondents 2 and 3 had received some stipend during the said period and they were directed to undergo training as Fitter Trade Apprentices in Carriage and Wagon Department. The respondents 2 and 3, on completion of their Shed Floor Training in open line for 2 years, were directed to undergo Shop Floor Training from 20.10.1993 for one year in Golden Rock Workshop at Tiruchirapalli. However, the workshop personnel re-directed the respondents 2 and 3 to Madurai Division, stating that they were required to undergo minimum period of 2 years training in Golden Rock workshop to cover the required 120 Related Instruction Classes. Thereafter, the training period of the respondents 2 and 3 was extended with stipend. At that stage, the respondents 2 and 3 filed O.A.No.547 of 1994 , challenging the order dated 23.12.1993, extending their training period and prayed that they should be absorbed as Fitter against 25% Direct Recruitment Quota. The said O.A., was disposed of by the Tribunal by order dated 8.1.1997. The relevant portion of the order passed by the Tribunal is to the following effect:-

3. As regards the first relief namely the prayer for holding the letter of 23.12.93 by which the Apprentice Training period has been extended should be quashed, we note that this order has already worked itself out. Hence any consideration of this relief is not called for at this stage.

4. As regards the second relief, we note that the issue regarding the Apprentices not being permitted to take the examination has been raised only at the stage of filing the rejoinder. The applicants, admittedly, have been subjected to the period of Apprenticeship along with imparting of training

relating to R.I. Normally they should have been extended the facilities for appearing in the examination the passing of which would have enabled them to declare as Apprentices as per the Act. The respondents have not explained as to why this has not happened.

5. In the above circumstances, we deem it fit and proper to direct the respondents to extended all facilities to the applicants to take the examination as required under the Apprentices Act. This shall be done at the next available opportunity when such examination will be held by the concerned authorities. Any further relief regarding absorption may be considered by the respondents after the Apprentices qualify in the relevant test to be held by the competent authorities and as per law laid down by the Supreme Court in this regard. For the purpose of absorption, their seniority among the Act Apprentices as per Act shall be reckoned deeming the date of completion of training as 17.11.1994.
3. It is to be noted that the Regional Director, Regional Directorate Apprentices Training, who is the authority under the Apprentices Act, was not a party in the aforesaid O.A. After the order was passed, certain correspondences between the present writ petitioners and the present Respondent No.4, The Regional Directorate of Apprentices Training, went on. It was discovered that, since contract of Respondents 2 and 3 as envisaged under Section 4 of the Apprentices Act has not been registered, the fourth respondent did not permit the respondents 2 and 3 to appear for the examination in order to obtain the Apprenticeship Certificate and ultimately, the respondents 2 and 3 were also served with communication to the said effect. The respondents 2 and 3 were again forced to file O.A.No.807 of 1999 before the Tribunal claiming for the following relief :-

. . . For the aforesaid reasons, this Honble Tribunal may be pleased to pass an order:

(i) directing the first and second respondents to appoint the applicants as Fitters in the 25% quota under Para 159 of the Indian Railway Establishment Manual meant for Act Apprentices or for serving employees with due seniority as directed by this Honble Tribunal in O.A. No.547 of 1994.

or in the alternative

(ii) direct the respondents to register the applicants contracts under the Apprentices Act, 1961 with effect from 23.4.91 and allow them to complete the training and qualify as Act Apprentices with due seniority as directed by this Hon□ble Tribunal in O.A.No.547 of 1994 and

(iii) Grant all consequential benefits to the applicants, award costs and render justice.

4. Before the Tribunal, a counter was filed on behalf of the present writ petitioners wherein it was contended that even though the petitioners extended all possible help in order to enable the respondents 2 and 3 to complete the training and to appear for the examination, due to the fact that contract had not been registered, the present respondent No.4,

namely, the Regional Directorate Apprentices Training, was not in a position to do the needful.

5. A counter affidavit was also filed on behalf of the present Respondent No.4 (Respondent No.3 before the Tribunal) indicating that in the absence of contract being registered, the training period could not have been completed nor the trainees could be allowed to appear at the examination.

6. Before the Tribunal, the learned counsel appearing for the present petitioners had submitted that they would have no objection in granting the alternative prayer made in the Original Application by the applicants (present Respondents 2 and 3).

7. The Tribunal, on consideration of the materials on record, came to hold that . . . the applicants (present Respondents 2 and 3) were selected for training as Apprentices under the Apprentices Act, 1961 in Central Workshop, Southern Railway and allotted to Madurai Division for training, as per the terms of Workshop Personnel Officer/GOC, Ponmalai, letter dated 23.4.1991. They were directed to undergo the Shed Floor Training in the Open Line Establishment in Madurai Division and Shop Floor Training at Golden Rock Workshop for a period of three years. They were given periodical training at Basic Training Centre, Madurai during the month of May, 1992. On completion of the Shed Floor Training in Open Line for two years, the applicants were directed to go to Golden Rock Workshop to undergo Shop Floor Training from 20.10.199 3 for one year. This was done since the applicants have to complete 120 related Instruction Classes (R.I.) for statutory obligation or 40 R.I. classes for a period of one year training. The applicants therefore were directed to attend two years training in Golden Rock Workshop to cover the required 120 R.I. classes at the rate of 60 R. I. classes per year. The same could not be done, since the applicants were directed to undergo training from Madurai Division to Golden Rock Workshop from 20.10.1993. Therefore, the Chief Personnel Officer, Madras, by his letter dated 16.12.1993, advised to extend their training period with full stipend creating an opportunity to make up the shortfall, the prescribed minimum period of R.I. classes and as such, the training period was extended by one year, by letter dated 23.12.1993. These applicants challenged the letter dated 23.12.1993 in the above cited O.A..

After the disposal of the earlier O.A.No.547 of 1994, correspondences continued and the authority under the Apprentices Act informed the applicants that their names had not been registered. The circumstances also show that there was failure on the part of the Railways in not taking necessary action and these applicants, from 1991 onwards, have been asked to move from pillar to post.

The Tribunal further observed: 20. When we put a question to the learned counsel for the Railways, the learned counsel submitted that he has no objection in granting the alternative relief asked for in the O.A. i.e., to direct the respondents to register the applicants contracts under the Apprentices Act, 1961 with effect from 23.4.1991 and allow them to complete

the training and qualify as Act Apprentices with due seniority as directed by this Tribunal in O.A.No.547 of 1994. It is true that the applicants are asked for such a relief. But if the Tribunal is granting this relief that will not be in accordance with law. We have already extracted the relevant portion of Section 4. Only after a contract, the apprentice training can be go on. If it is so, then we must direct the respondents to enter into a contract now and ask the applicants to undergo a training for another three years. That means from 1991 to 2000, the entire time is wasted. The chances of employment of the applicants will also be affected. We also cannot compel the third respondent to register the names of the applicants with effect from 2 3.4 .1991, which will be against law. That means, the alternative relief cannot be granted by this Tribunal on the basis of the concession given by the learned counsel for the Railways.

The Tribunal further observed that it cannot also give a declaration that the applicants were deemed to have completed the training under the Apprentices Act. After coming to the aforesaid conclusion, the Tribunal observed :

25. We have already stated that because of the negligence by the Railways, the applicants have not entered into a contract for apprentices nor their names could be registered with the respondent. But at the same time they have represented that they are apprentices under the Act and utilised their training against law for the last few years. In fact, in such cases the Railways are bound to pay exemplary damages to the applicants. But we cannot grant the same in this case. At the same time, we feel that it is a fit case wherein the respondents 1 and 2 are directed to offer suitable employment to the applicants and they also directed to take steps to move the Government if they feel that they have no power to appoint them in the 25% quota as provided under Rule 159 of the Indian Railway Establishment Manual. It is for the applicants to accept the employment or not.

On the basis of the aforesaid conclusion, the O.A., was allowed, with a further direction to give costs of Rs.2,500/- each.

8. Learned counsel appearing for the Railways has submitted that, even conceding for the sake of argument that there was some amount of negligence or carelessness on the part of the Railways in not getting the contract registered under Section 4 of the Apprentices Act, the direction given by the Tribunal for giving employment is not contemplated and the Tribunal could have accepted the alternative relief claimed by the applicants.

9. Learned counsel has further submitted that even if the applicants would have completed their training in normal course by the end of November, 1994 and thereafter, would have passed the test to be held by the present respondent No.4, as per the provision contained in the Apprentices Act or under the contract, there is no guarantee that such persons would be employed as a matter of course and they have to be considered for the employment in accordance with paragraph 159 of the Railway Establishment Manual along with other candidates available from open market and the only privilege to such apprentices is that they would be given some preferences.

10. It was stated before the Tribunal that those who had completed training before 1989 are yet to be fully absorbed. Even though in course of hearing, the learned counsel for the Railways was not in a position to indicate the exact position as on the date of hearing, he has submitted that 1991 trainees were yet to be absorbed. It is therefore contended by him that if the present respondents 2 and 3 would have completed their training, they could not have been absorbed as a matter of course and they cannot be in a better position merely because they were able to complete their training, even due to negligence on the part of the Railways. He has suggested that the alternative prayer claimed by the applicants should have been allowed and the present petitioners are prepared to consider on successful completion of such training as if such training was completed in November, 1994 as has been directed by the Tribunal on earlier occasion. He has further submitted that on earlier occasion also, there was a prayer for absorption without completion of the training, but the Tribunal had rightly observed that such a direction cannot be issued and merely because subsequently, the present respondents 2 and 3 were not allowed to appear for the examination as the formality regarding registration of the contract had not been fulfilled, there is no justification to give a direction for their regular absorption.

11. Learned counsel appearing for the contesting respondents 2 and 3, on the other hand, submitted that but for the negligence of the present petitioners, the two selected candidates would have completed their apprenticeship training long back and thereafter, they could have sought for appointment in Railways or under any other authority, but due to lack of Apprenticeship Certificate, they could not seek employment before any other organisation. It has been further submitted that if the respondents 2 and 3 are directed to undergo a fresh training at this stage, they would be losing further vital three years.

12. After hearing the learned counsels appearing for the parties at length, after going through various materials on record and after considering pros and cons and the effect of the order passed by the Tribunal, we are of the opinion that the direction of the Tribunal is required to be modified and at the same time the scales of justice have to be balanced in a careful manner.

13. As rightly observed by the Tribunal, a declaration cannot be given that these respondents 2 and 3 have successfully completed the training. As per the Apprentices Act,1961, such apprentices are required to undergo a test to be held by the competent authority under the Apprentices Act and in the absence of such test, no certificate can be given as they have not completed the training under the Act. The concern shown by the Tribunal to the effect that if the alternative remedy claimed by the applicants were to be granted, such applicants would be required to undergo fresh training for a period of three years appears to be justified.

14. The contract is required to be between the petitioners and the respondents 2 and 3. Respondent No.4 is merely an authority with whom such contract was required to be registered. The contract between the petitioners and the respondents 2 and 3 can be spelt out from the conduct

evinced by both the parties, even though no formal contract in the prescribed proforma had been signed. Section 4 deals with contract of apprenticeship. Section 4(5) of the Apprentices Act is to the following effect: 4. Contract of apprenticeship- (1) to (4) . . . (5) The Apprenticeship Adviser shall not register a contract of apprenticeship unless he is satisfied that the person described as an apprentice in the contract is qualified under this Act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract.

15. In view of the aforesaid provision, the Apprenticeship Adviser is only required to find out whether the person described as apprentice under the contract is qualified under the Act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract. Even though the Regional Director of Apprentice Training is respondent No.4, no contention has been raised by such party either before this Court or before the Tribunal that the present respondents 2 & 3 were not qualified for being engaged as apprentices to undergo the Apprenticeship training. Under Section 2 1 of the Act, every trade apprentice who has completed the period of training is required to appear in the test conducted by the Department to determine his proficiency and thereafter under subsection(2) a certificate of proficiency in the trade is to be granted. Even though some disputes have been raised in the writ petition by the petitioners as to whether the respondents 2 and 3 have completed the training, it is apparent from the order passed by the Tribunal on earlier occasion in O.A.No.547 of 1994 that the applicants had admittedly completed the training. After disposal of the said O.A., in the correspondence between the petitioners and the fourth respondent, the requirement was not relating to completion of training, but permission was sought for to allow the persons concerned to appear at the test and at that stage, it was communicated by the respondent No.4 that since contract has not been registered, such persons could not be allowed to appear at the test. It was the duty of the petitioners to submit the contract before the appropriate authority under the Apprentices Act for registration within the stipulated period. As already noticed, the authority can refuse to register only when the persons selected for the training are not eligible. Since no dispute has been raised on this score and on conduct of the petitioners and the respondents 2 and 3, it is apparent that contract was in existence, no injustice would be caused if the respondent No.4 is directed to register the contract, which shall have the retrospective effect from the date of initiation of the training, and the respondents 2 and 3 shall now be allowed to appear at the test to be held at the earliest in normal course. If the respondents 2 and 3 receive the required certificate as contemplated under Section 21 of the Act, it shall be deemed as if they had completed their training with effect from November, 1994 as indicated in the order passed by the Tribunal in O.A.No.547 of 1994.

16. As observed by the Tribunal, a person on successful completion of the training is eligible to be considered for employment under the employer. Such a person also could have sought for the employment elsewhere on the basis of such certificate. The respondents 2 and 3 are obviously deprived of the latter opportunity for all these years. So far as

the present petitioners are concerned, in view of the submission made by the counsel for the petitioners that the persons who had completed their training in 1991 were yet to be employed and keeping in view that under the Apprentice Act, the apprentices have no right to get employment, the only privilege which can be extended to such apprentices is that they would be given some preferences. In the peculiar facts and circumstances of the present case, it can be directed that as and when the petitioners get the certificate as required under Section 21, they shall be considered and given preference in the matter of employment with the present petitioners and there could be no excuse to the petitioners to contend that the apprentices who had already completed were yet in the queue. This direction is given keeping in view the fact that the petitioners have dealt with the matter in a most unsatisfactory way.

17. The contention of the learned counsel for the respondent No.2 that the respondents 2 and 3 can be considered for employment immediately in accordance with para 159 of the Indian Railway Establishment Manual, Volume I, requires some elucidation. From the submissions made before the Tribunal it is apparent that the present respondents 2 and 3 have placed reliance upon para 159(1)(i). However, the said paragraph relates to selection from course completed Act Apprentices. Therefore, before obtaining the certificate as envisaged under Section 21 of the Act, it cannot be said that the respondents 2 & 3 can be eligible under paragraph 159(1)(i).

18. Learned counsel appearing for the respondents 2 and 3 has sought to get sustenance from Para 159(1)(ii) of the Indian Railway Establishment Manual, Vol.I. This relates to filling of vacancies in the category of skilled Artisans Grade-III from serving semi-skilled and unskilled staff with educational qualification as laid down in the Apprentices Act. It is true that the educational qualification referred to in the said paragraph is to mean completion of SSLC. However, such requirement is confined to serving semi-skilled and unskilled staff which would obviously mean the semi-skilled and unskilled staff already employed by the Railways. Even though the respondents 2 and 3 have been dealt with in a cavalier fashion by the Railways, it may not be proper to give a direction to the Railways to ignore the provisions. Therefore, before obtaining the certificate as

envisaged under Section 21, the respondents 2 and 3 are not eligible to get employment as skilled artisans as envisaged in 159(1)(i) and since they are not serving staff, they are not eligible under para 159(1)(ii).

19. In view of the vicissitudes undergone by the respondents 2 and 3, the only relaxation which can be shown is that they will be given preference for employment under para 159(1)(1) of the Indian Railway Establishment Manual,Vol.I as soon a in the certificate as envisaged under Section 21 of the Act and the fact that they have crossed the age limit in the meantime shall not be considered as a bar and they shall be allowed to appear at the test and the controversy as to whether they had subsequently completed

the required period shall not be re-opened in view of the observation of the Tribunal on the earlier occasion to the effect that they had already completed the training period. The order passed by the Tribunal is modified to the extent and subject to the directions contained above.

20. In addition to the above directions, the petitioners are also directed to pay a sum of Rs.5,000/- each to the respondents 2 and 3 towards costs/compensation within a period of two months from the date of receipt of the present order.

Index : Yes
Internet: Yes

To

1. Union of India, rep. by the Chief Personnel Officer, Southern Railway, Park Town, Chennai 600 003.

2. Divisional Personnel Officer, Southern Railway, Madurai.

3. The Registrar, Central Administrative Tribunal, Chennai Bench, Chennai 104.